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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Douglas A. Ducey, Governor of the State of
Arizona, in his official capacity,

Plaintiff,

v.

Randy Moore, Chief of the United States
Forest Service, in his official capacity;
Camille Calimlim Touton, Commissioner of
the United States Bureau of Reclamation, in
her official capacity; Thomas J. Vilsack,
United States Secretary of Agriculture, in
his official capacity; United States Forest
Service; and United States Bureau of
Reclamation,

Defendants.

No.

COMPLAINT

1 Plaintiff Douglas A. Ducey (“Plaintiff”), for his Complaint against Randy Moore,
2 Camille Calimlim Touton, Thomas J. Vilsack, the United States Forest Service, and the
3 United States Bureau of Reclamation (collectively, “Defendants”), allege as follows:

4 **INTRODUCTION**

5 1. An unprecedented crisis has arisen in the State of Arizona that is the creation
6 of the federal government. Countless migrants are crossing unsecured areas of the border
7 illegally. The result is a mix of drug, crime, and humanitarian issues the State has never
8 experienced at such a significant magnitude, resulting in the State bearing the burden of the
9 federal government’s inaction. Arizona has pleaded with the federal government to act
10 many times, but such pleas have been either ignored, dismissed, or unreasonably delayed.
11 Rather than cooperate and work together with Arizona, the federal government has taken a
12 bureaucratic and adversarial role.

13 2. As a result, Governor Ducey took action to defend the State of Arizona and
14 its citizens, under the inherent authority of the U.S. Constitution and his authority as
15 Governor of Arizona, by directing that the gaps in the border wall be filled. Following that
16 direction and subsequent action to secure Arizona’s border and protect its citizens, the
17 federal government has asserted that Arizona and Governor Ducey do not have the authority
18 to take these protective actions. Thus, Governor Ducey files this lawsuit for the Court to
19 determine important questions of law regarding jurisdiction over land within the State of
20 Arizona and a state’s interests in protecting itself. If these questions are unresolved, the
21 federal government will continue to delay, infringe on the Governor’s state of emergency
22 powers, and endanger the lives and welfare of Arizona citizens and their property.

23 **PARTIES, JURISDICTION, AND VENUE**

24 3. Plaintiff Ducey is the Governor of the State of Arizona. Under Arizona law,
25 Governor Ducey is the official authorized to declare and respond to states of emergency
26 within the State. *See* Ariz. Rev. Stat. § 26-303(D). Pursuant to this authority, Governor
27 Ducey has declared a state of emergency due to the illegal influx of migrants across
28 Arizona’s southern border that has and continues to overwhelm private, local, and state

1 resources. Defendants’ unlawful overreach by ordering a state agency to cease operations,
2 which only Governor Ducey has lawful authority to direct under his emergency powers,
3 regulates and injures Governor Ducey by substantially and immediately restricting his
4 authority and discretion. In particular, Defendants are attempting to prevent Governor
5 Ducey from enforcing Executive Order 2022-04, as he is entitled pursuant to A.R.S. § 26-
6 303(E)(1) and (2), to protect the health and safety of Arizona citizens at the southern border
7 and throughout the State.

8 4. Governor Ducey is injured further by Defendant United States Forest Service
9 (“Forest Service”) asserting that, in acting on his emergency powers to enforce Executive
10 Order 2022-04, the Governor is subject to the federal regulatory approval process that
11 governs Forest Service land use and occupancy. As stated below, Governor Ducey and the
12 emergency powers provided to him by A.R.S. § 26-303(D) and (E) are not subject to any
13 such federal regulations (including the federal Administrative Procedures Act) for the land
14 in question here because, among other reasons: (a) the land is not federal; and (b) even if it
15 was, the State—and Governor Ducey by virtue of his emergency powers—has concurrent
16 jurisdiction. *See Sierra Club v. E.P.A.*, 292 F.3d 895, 899–900 (D.C. Cir. 2002) (“In many
17 if not most cases the petitioner’s standing to seek review of administrative action is self-
18 evident.”)

19 5. In addition, standing has routinely been found in pre-enforcement situations
20 involving the federal government, and those cases are applicable here. *See United Food &*
21 *Com. Workers Int’l Union, AFL-CIO, CLC v. IBP, Inc.*, 857 F.2d 422, 428 (8th Cir. 1988)
22 (holding that a plaintiff that would be injured by enforcement of a regulatory statute has
23 standing to challenge that statute, regardless of whether enforcement threats have
24 transpired); *Owner-Operator Indep. Drivers Ass’n, Inc. v. Fed. Motor Carrier Safety*
25 *Admin.*, 656 F.3d 580, 585–87 (7th Cir. 2011) (holding that regulated party had standing to
26 bring pre-enforcement challenge to rule); *Brackeen v. Haaland*, 994 F.3d 249, 296 (5th Cir.
27 2021) (“If, as State Plaintiffs alleged, the Secretary promulgated a rule binding on states
28 without the authority to do so, then State Plaintiffs have suffered a concrete injury to their

1 sovereign interest in controlling child custody proceedings that was caused by the Final
2 Rule.”).

3 6. Additionally, Governor Ducey serves as the sole State official responsible for
4 communications between the State of Arizona and the federal government. *See* Ariz. Rev.
5 Stat. § 41-101(A)(4).

6 7. Defendant Randy Moore is the Chief of the United States Forest Service and
7 is named in his official capacity.

8 8. Defendant Camille Calimlim Touton is the Commissioner of the U.S. Bureau
9 of Reclamation and is named in her official capacity.

10 9. Defendant Thomas J. Vilsack is the Secretary of Agriculture and is named in
11 his official capacity. In this role, Secretary Vilsack oversees the Forest Service and Bureau
12 of Reclamation and is responsible for enacting rules and regulations and establishing
13 services that insure the objects of national forests—namely, to regulate their occupancy and
14 use and preserve the forests from destruction. 16 U.S.C. § 551.

15 10. Defendant Forest Service is a subdivision of the U.S. Department of
16 Agriculture (“USDA”), an agency of the United States of America. The Forest Service is
17 generally responsible for managing the United States’ natural resources, including National
18 Forest System lands, and claims jurisdiction over the land that is the subject of this
19 litigation.

20 11. Defendant U.S. Bureau of Reclamation (“BOR”) is a subdivision of the
21 Department of the Interior (“DOI”), an agency of the United States of America. BOR is
22 responsible for reviewing and issuing use permits on Reclamation land, facilities, or
23 waterbodies. *See* 43 C.F.R. § 429 *et seq*; Reclamation Manual LND 08-01 at 7 (Sept. 16,
24 2021).

25 12. This Court has jurisdiction under 28 U.S.C. §§ 1331, and 2201-02.

26 13. Venue in the District of Arizona is proper under 28 U.S.C. § 1391(e) because
27 (a) a substantial part of the events and omissions giving rise to the claim occurred in this
28 district—namely, the crisis at the Arizona southern border and issuance of Executive Order

2022-04, and (b) a substantial part of property that is the subject of the action—the Roosevelt Reservation—is situated in the district.

FACTUAL ALLEGATIONS

14. The citizens of Arizona are experiencing an unprecedented crisis at the State’s southern border, caused in large part by the federal government’s complete abdication of responsibility with respect to immigration and national security policy.

15. In 2017, the United States government initiated construction of an effective border wall between the United States and Mexico, including along the southern border of Arizona. However, the federal government abandoned the effort in 2021, leaving states without the means or support to continue construction.

16. With construction halted, the abandonment of the project left numerous gaps in the border wall that fail to provide a meaningful barrier across the State, making it significantly easier for foreign nationals to cross illegally into Arizona. Indeed, the crisis at the southern border is characterized by a massive, multifold influx of migrants, drugs, and crime that only continues to increase alongside the federal government’s neglect. The gaps in the border wall have also created a humanitarian crisis within Arizona as migrants flood through the border wall gaps and into Arizona’s border towns, which quickly became overwhelmed.

17. In the federal government’s own words, “[t]he last decades have yielded a dramatic increase in encounters at the [southwest border]” in which “border encounters more than doubled between 2017 and 2019, and— following a steep drop in the first months of the COVID-19 pandemic—continued to increase at a similar pace in 2021 and 2022.” *Implementation of a Parole Process for Venezuelans*, 87 Fed. Reg. 63507 (October 19, 2022).

18. The influx of migrants “has been particularly acute in certain border sectors” in Texas and Arizona, “all of which are at risk of operating, or are currently operating, over capacity.” *Id.* In Fiscal Year (“FY”) 2022, “the Del Rio, El Paso, and Yuma sectors encountered almost double the number of migrants as compared to FY 2021 (an 87 percent

1 increase), and a ten-fold increase over the average for FY 2014 - FY 2019.” *Id.*

2 19. This increase in migration “has put a strain on domestic resources, which is
3 felt most acutely by border communities.” *Id.* Indeed, “local communities have reported
4 strain on their ability to provide needed social services. Local officials and NGOs report
5 that the temporary shelters that house migrants are quickly reaching capacity due to the high
6 number of arrivals, and stakeholders in the border region have expressed concern that
7 shelters will eventually reach full bed space capacity and not be able to host any new
8 arrivals.” *Id.*

9 20. Further compounding the crisis, in 2021, the federal government also
10 terminated the “Remain in Mexico” policy that protected Arizona border towns from floods
11 of illegal border crossings.

12 21. In addition to this unsustainable humanitarian crisis, the lackluster security at
13 the border allows bad actors to exploit the crisis through drug and human trafficking and
14 other crime.

15 22. According to data from the United States Customs and Border Protection, the
16 Tucson Sector recorded 169 events involving Fentanyl in just the first eight months of 2022,
17 compared with just 14 events in all of 2019. This represents an 828% increase.

18 23. The Tucson Sector has also seized 561 pounds of Fentanyl in the first eight
19 months of 2022, which is more than 2019 through 2021 combined.

20 24. According to data from the Federal Bureau of Investigation, Arizona has
21 significantly outpaced the national average each year for violent crime offenses between
22 2011 and 2020. These offenses include homicide, rape, robbery, and aggravated assault.

23 25. Moreover, the Tucson Sector has already recorded the highest number of
24 weapon and ammunition seizure events in 2022 than in the previous four years.

25 26. The county lines of Cochise County include part of Arizona’s southern
26 border. According to data from the eight largest law enforcement agencies in Cochise
27 County—consisting of Benson, Bisbee, Douglas, Huachuca City, Sierra Vista, Tombstone,
28 and Willcox Police Departments and the Cochise County Sheriff’s Office—Cochise County

1 experienced a double-digit percentage rise (18%) in violent crime offenses between 2020
2 and 2021.

3 27. In Huachuca City (which is located in Cochise County), reports of aggravated
4 assaults in 2021 were at their highest level since 2011.

5 28. In Sierra Vista (which is located in Cochise County), reports of violent crimes
6 increased by over 20% between 2020 and 2021. In 2021, homicides in Sierra Vista were
7 also at their highest level in ten years.

8 29. According to the Cochise County Sheriff's Department, homicides in Cochise
9 County are on the rise. In fact, more homicides were reported in the past two years than in
10 the nine previous years combined.

11 30. These statistics are just mere samples of the unprecedented wave of crime and
12 drugs that plague Arizona communities, and especially the State's border towns, due to the
13 unresolved border crisis.

14 31. Due to the worsening conditions on Arizona's southern border and the crush
15 of demand on private, local, and state resources, Governor Ducey was left with no choice
16 but to step in for the federal government to protect the citizens of Arizona.

17 32. Pursuant to his authority under A.R.S. § 26-303, on April 20, 2021, Governor
18 Ducey declared a state of emergency designed to address the failed policies of the federal
19 government that have encouraged foreign nationals and criminal organizations to take
20 advantage of the conditions at the southern border.

21 33. Consistent with that declaration, Governor Ducey deployed the Arizona
22 National Guard to the Arizona southern border to assist border towns and local law
23 enforcement with the crisis.

24 34. However, despite their best efforts, simply increasing the number of
25 personnel was not enough for these small border towns, who bore the brunt of the federal
26 government's neglect.

27 35. As the crisis became more unsustainable, on September 20, 2021, Governor
28 Ducey and 25 other Governors requested a meeting with President Biden to collaborate on

1 solutions. No response to that request was ever received. [See Ex. 1, Joint Letter on the
2 Border.]

3 36. The following month, a number of governors joined together and developed
4 a ten-point plan to address the border crisis. A response was not sent until more than six
5 weeks later on November 24, 2021, and it did not include a solution that involved securing
6 the border. [Ex. 2, Letter from DHS Secretary to Ducey.]

7 37. Following continued pleas by government officials at the state and local
8 levels, in December 2021, DHS offered border towns a small glimmer of hope by
9 authorizing the U.S. Customs and Border Protection (CBP) to address life, safety,
10 environmental, and remediation requirements for border barrier projects located within the
11 Boarder Patrol's Yuma and Tucson Sectors.

12 38. However, as of this filing, more than ten months later, the federal
13 government's empty promise has yet again gone unfulfilled, as construction on this project
14 has not begun.

15 39. As crime and drugs continued to pour through gaps in the border wall,
16 Governor Ducey again exercised his authority by establishing the American Governors'
17 Border Strike Force with 25 other Governors. This initiative provided a mechanism for
18 collaboration with other state law enforcement agencies to target criminal activity by those
19 who exploit Arizona's border to expand their criminal enterprises.

20 40. Even with these actions, the situation on Arizona's border continued to
21 overwhelm the resources within the state.

22 41. Arizona communities could no longer wait for the federal government to
23 employ a solution.

24 42. As part of a comprehensive strategy to address the ongoing crises, the Arizona
25 State Legislature authorized and appropriated almost \$400 million for Fiscal Year 2023 to
26 fill the gaps in the border wall. The spending authority for this funding was effective on
27 July 1, 2022.

28 43. Accordingly, on August 12, 2022, Governor Ducey issued Executive Order

1 2022-04 directing the Director of Emergency Management to immediately close the gaps
2 in Arizona’s southern border wall. [See Ex. 3, Executive Order 2022-04.]

3 44. Shortly after issuing the Executive Order, Governor Ducey authorized the
4 Arizona Department of Emergency and Military Affairs (“DEMA”) to use the funding
5 appropriated by the legislature to employ a creative solution that involved closing the gaps
6 in the border wall, which would relieve the criminal activity and humanitarian crisis that
7 such gaps allow. Specifically, part of the plan involved double-stacking multi-ton shipping
8 containers between the gaps in an effort to create a solid, sustainable barrier until the federal
9 government erected a permanent solution.

10 45. Parts of this barrier at the border are located in a sixty-foot-wide swath of
11 State land running parallel with the southern border known as the Roosevelt Reservation.

12 46. Upon information and belief, on May 27, 1907, President Theodore Roosevelt
13 issued Proclamation 758, entitled “Setting Apart As Public Lands A Strip of Land On The
14 Mexican Frontier.” [See Ex. 4, Roosevelt Proclamation.] The Proclamation “reserved from
15 entry, settlement or other form of appropriation under the public land laws and set apart as
16 a reservation, all public lands within sixty feet of the international boundary between the
17 United States and the Republic of Mexico, within the . . . Territor[y] of Arizona.” [*Id.*]

18 47. This Proclamation did not cite any statutory authority upon which it relied.
19 Instead, the Roosevelt Reservation cited only that it was “necessary for the public welfare,”
20 to reserve the above-described land from “the operation of public land laws and kept free
21 from obstruction as a protection against the smuggling of goods between the United States
22 and [the] Republic [of Mexico].” [See *id.*]; see also Ariz. Const. art. I, § 1.

23 48. The shipping containers have proven to be an effective temporary solution, as
24 nearly 3,820 feet of previously open border near the overwhelmed community in Yuma is
25 now closed. Indeed, John Modlin, chief of the Border Patrol’s Tucson Sector, explained
26 that closing these gaps is a helpful strategy because “[i]f Yuma has 10 gaps and people were
27 crossing all 10 gaps, it’s much more difficult for us to deal with than if Yuma has one or
28

1 two gaps and the majority of traffic is crossing through those gaps.”¹

2 49. But rather than allowing Arizona to deal with the crisis the federal
3 government created, the federal government has not only proven uncooperative, but has
4 actually taken action to *block* the State from helping its own people.

5 50. For example, on July 7, 2022, the Arizona State Land Department and
6 Arizona Department of Agriculture requested approval from BOR “for the placement of
7 fencing materials along the former Yuma Valley Railroad line area,” to assist in keeping
8 produce safe from contamination by following the protocols established to guard against
9 another E. coli outbreak following the crippling contamination in 2018.

10 51. On August 9, 2022, BOR responded, *inter alia*, that although it would
11 “continue to work” with various agencies on “various border barrier and related projects to
12 address and mitigate current gaps in the border barrier located on Reclamation lands which
13 contribute to the increased migrant crossings,” a “cultural report assessing the potential
14 effect of the fence installation on federal lands and within the[] historic feature [of the Yuma
15 Valley Railroad] will be required.” *See Letter from United States Department of the Interior*
16 (Aug. 9, 2022).

17 52. Additionally, on September 16, 2022, DEMA notified Coronado National
18 Forest personnel that it was seeking authorization to place barriers on National Forest land
19 in all areas with gaps in the border wall.

20 53. However, on October 7, 2022, the Forest Supervisor of the Coronado National
21 Forest responded with a letter insisting that the Forest Service had not authorized the
22 placement of any shipping containers and that the State would need to undergo a lengthy
23 federal regulatory approval process before the State could proceed. [See Ex. 5, Letter from
24 Coronado National Forest.] Upon information and belief, this regulatory approval process
25 refers to BOR’s permitting process discussed below. The letter also requested DEMA to
26 “refrain from any further activity associated with the containers on NFS lands, including

27
28 ¹ See <https://www.fox10phoenix.com/news/migrants-at-arizona-border-unhindered-by-shipping-container-wall>.

1 the use of any equipment, until such time as a proper authorization is secured,” which means
2 DEMA cannot even remove the containers. [*Id.*]

3 54. However, despite participating in some fruitless phone calls with the agency,
4 no action was taken to address the State’s concerns.

5 55. Accordingly, on October 7, 2022, DEMA notified the Forest Service that it
6 intended to close a 10-mile gap in Cochise County—which includes land within the
7 Roosevelt Reservation—to ensure the safety of Arizona citizens and requested cooperation
8 from the agency in achieving this vital goal. [Ex. 6, Letter from DEMA to the Forest
9 Service.]

10 56. After successfully repairing the border gaps in Yuma, DEMA initiated the
11 process to add double-stacked shipping containers in the same manner to close the gap in
12 Cochise County. However, upon information and belief, the Forest Service has threatened
13 to arrest state employees working to close the border wall if they do not cease operations.

14 57. Through their actions and statements, the Forest Service and BOR have made
15 clear that they claim to exercise exclusive jurisdiction over the Roosevelt Reservation.

16 58. However, even if the State were to submit to BOR’s permitting process, there
17 is no statutory processing time in which BOR must make a determination on an application
18 for a use permit. *See* 43 C.F.R. § 429.13(b) (“The processing time depends upon the
19 complexity of [the] requested use, issues associated with it, and the need for additional
20 information from [the applicant].”)

21 59. Further, BOR will only approve an application if it determines that the
22 requested use is appropriate and “not likely to interfere with [BOR’s] project purposes or
23 operations.” *Id.* § 429.16. Because the “issuance of a use authorization is at Reclamation’s
24 discretion,” *id.* § 429.15, BOR is not required to issue a use authorization and may approve
25 or deny the application after reviewing the proposed use, based upon certain enumerated
26 criteria. *See id.* § 429.14. BOR also does not have a mechanism for a state to request an
27 emergency exemption to the process to address health, welfare, and safety exigencies for
28 which the federal government refuses or is unable to address.

64. If Governor Ducey is unable to secure the border during this process, he will continue to experience substantial hardship in not being able to assert his lawful emergency authority, which will result in the humanitarian crisis continuing, border towns once again being overwhelmed, and more Arizona citizens falling victim to the violence and drugs that flow through the gaps.

(Article II of the United States Constitution)

67. Although Governor Ducey fully understands the role as historically and

1 currently exercised by the President with respect to national security, Article II of the U.S.
2 Constitution does not explicitly provide for the President to exercise his executive power to
3 secure land or property without congressional approval. Even further, Article II of the U.S.
4 Constitution does not allow the President to exercise his executive power for the benefit of
5 “public welfare.”

6 68. Accordingly, the Roosevelt Reservation was outside of President Roosevelt’s
7 authority to issue, and as such is unconstitutional as a matter of law and has no force or
8 effect.

9 69. Therefore, the Forest Service’s and BOR’s claimed jurisdiction over the
10 Roosevelt Reservation as federal land within the State of Arizona’s borders conflicts with
11 the State’s sovereignty over that land and is *ultra vires*.

12 70. A live controversy exists that is ripe for determination and that would be
13 redressable through equitable relief. Through their actions and statements, the Forest
14 Service and BOR have made clear that they claim to exercise jurisdiction over the Roosevelt
15 Reservation.

16 71. A judicial declaration with respect to the legal and jurisdictional status of the
17 Roosevelt Reservation would not interfere with further administrative action, as no permit
18 application is at issue and a decision would merely clarify whether Defendants can demand
19 that Governor Ducey undergo its regulatory process. Further, Governor Ducey seeks to
20 resolve purely legal questions that would not benefit from further factual development.

21 72. Governor Ducey also need not go through the administrative process because
22 he is not challenging the denial of a permitting decision, but rather the legal status of the
23 Roosevelt Reservation and the jurisdiction of the Forestry Service and BOR. *See Darby v.*
24 *Cisneros*, 509 U.S. 137, 154 (1993); *see also Sierra Club v. Trump*, 963 F.3d 874, 891 (9th
25 Cir.) (discussing D.C. Circuit cases that “reaffirm that review is ordinarily available when
26 an agency exceeds its delegation of authority”), *cert. granted*, 141 S. Ct. 618 (2020), *and*
27 *vacated and remanded sub nom. Biden v. Sierra Club*, 142 S. Ct. 46 (2021).

28 73. Governor Ducey seeks a declaration from this Court pursuant to 28 U.S.C.

1 §§ 2201–02, that the Roosevelt Reservation is unconstitutional as a matter of law and has
2 no force or effect. Governor Ducey further seeks an injunction barring any federal
3 governmental actors, including the Forest Service and BOR, from attempting to exercise
4 jurisdiction over the Roosevelt Reservation in the State.

5 **SECOND CLAIM FOR RELIEF**

6 **(Declaratory Judgment in the alternative, 28 U.S.C. § 2201–02)**

7 **(*Ultra Vires* Agency Action)**

8 74. Governor Ducey incorporates and realleges the foregoing paragraphs as
9 though set forth here in full.

10 75. Upon information and belief, DHS, DOI, and USDA entered into a
11 Memorandum of Understanding on or about March 31, 2006 (“2006 MOU”). [See Ex. 7,
12 MOU.] The 2006 MOU states that the “Parties acknowledge that CBP operation and
13 construction within the sixty-foot ‘Roosevelt Reservation’ of May 27, 1907 (along the US-
14 Mexico border) . . . is consistent with the purpose of those reservations and that any CBP
15 activity (including, but not limited to, operations and construction) within the sixty-foot
16 reservation[] is outside the oversight or control of Federal land managers.” [*Id.*] The 2006
17 MOU also explicitly states that “DHS, through its constituent bureaus (including CBP), is
18 statutorily mandated to control and guard the Nation’s Borders and boundaries, including
19 the entirety of the northern and southern land and water borders of the United States.” [*Id.*
20 at Section II.A.] By contrast, the 2006 MOU acknowledges that DOI and USDA “have
21 responsibility for enforcing Federal laws relating to land management, resource protection,
22 and other such functions on Federal lands under their jurisdiction.” [*Id.* at Section III.B.]
23 Upon information and belief, the 2006 MOU is still in effect among these federal entities.

24 76. Upon information and belief, the Forest Service is an agency of USDA. Upon
25 information and belief, BOR is an agency of DOI. Accordingly, both the Forest Service and
26 BOR are bound by the 2006 MOU among their respective federal departments.

27 77. Furthermore, upon information and belief, DHS is the agency specifically
28 designated for national security determinations. DHS has fifteen components, including

1 U.S. Citizenship and Immigration Services and CBP. Because the Forest Service and BOR
2 are not components of the fifteen enumerated DHS offices, they have no authority to make
3 determinations that affect national security interests.

4 78. As such, the Forest Service and BOR are aware, for these and other reasons,
5 that they do not have jurisdiction over the Roosevelt Reservation.

6 79. A live controversy exists that is ripe for determination and that would be
7 redressable through equitable relief. Through their actions and statements, the Forest
8 Service and BOR have made clear that they claim to exercise jurisdiction over the Roosevelt
9 Reservation.

10 80. Alleging in the alternative and therefore assuming that the Roosevelt
11 Reservation is constitutional, the Forest Service's and BOR's expressed claims of
12 jurisdiction over the Roosevelt Reservation conflict with their designated authority and are
13 therefore *ultra vires*. See e.g., *Sierra Club*, 963 F.3d at 891; *Biden*, 142 S. Ct. 46 (2021).

14 81. Accordingly, Governor Ducey seeks a declaration from this Court pursuant
15 to 28 U.S.C. §§ 2201–02 that neither the Forest Service nor BOR have jurisdiction over the
16 areas of the Roosevelt Reservation in the State over which they have respectively claimed
17 jurisdiction.

18 **THIRD CLAIM FOR RELIEF**

19 **(Declaratory Judgment in the alternative, 28 U.S.C. § 2201–02)**

20 **(Concurrent State Jurisdiction)**

21 82. Governor Ducey incorporates and realleges the foregoing paragraphs as
22 though set forth here in full.

23 83. A state generally has complete jurisdiction over the lands within its exterior
24 boundaries. See *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2493 (2022) (citing U.S.
25 Const. Amdt. 10). The Roosevelt Reservation is within the State's exterior boundaries.

26 84. However, even assuming that the Roosevelt Reservation is constitutional (it
27 is not), Governor Ducey alleges further that when Arizona was admitted to the Union, the
28 United States did not retain exclusive jurisdiction over the Roosevelt Reservation. See *State*

1 v. *Galvan-Cardenas*, 165 Ariz. 399, 402 (1990). As such, the State and the federal
2 government have concurrent jurisdiction over the Roosevelt Reservation.

3 85. A live controversy exists that is ripe for determination and that would be
4 redressable through legal and equitable relief. Through their actions and statements, the
5 Forest Service and BOR have made clear that they claim to exercise exclusive jurisdiction
6 over the respective areas of the Roosevelt Reservation, to the exclusion of the State.

7 86. Accordingly, Governor Ducey seeks a declaration from this Court pursuant
8 to 28 U.S.C. §§ 2201–02 that the State has concurrent jurisdiction with the appropriate
9 federal governmental entity over those parts of the Roosevelt Reservation located in the
10 State.

11 **FOURTH CLAIM FOR RELIEF**

12 **(Declaratory Judgment, 28 U.S.C. §§ 2201–02)**

13 **(Article I, Section 10 and Article IV, Section 4 of the United States Constitution)**

14 87. Governor Ducey incorporates and realleges the foregoing paragraphs as
15 though set forth here in full.

16 88. Article IV, Section 4 of the United States Constitution requires that the U.S.
17 “shall . . . protect each of the [States] against Invasion”

18 89. Article I, Section 10 of the United States Constitution allows a State, when
19 “actually invaded, or in such imminent Danger as will not admit of delay,” to “lay any Duty
20 of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or
21 Compact with another State, or with a foreign Power, or engage in War,” without
22 congressional authority.

23 90. Governor Ducey’s actions authorizing DEMA to close gaps in the border wall
24 are a temporary response to the overwhelming emergency crises at the border. The crises
25 place the State and its citizens in such imminent danger as will not allow delay, which is
26 why Governor Ducey entered and seeks to enforce Executive Order 2022-04—to protect
27 the health and safety of Arizona citizens at the southern border and throughout the State.
28 Governor Ducey’s actions authorizing DEMA to close gaps in the border wall also result

1 from the federal government's failure to protect the State pursuant to the U.S. Constitution.

2 91. However, based upon the subject federal agency action from the Forest
3 Service and BOR, the federal government has expressed an intent to prevent the State from
4 protecting itself subject to Article 1, Section 10 of the U.S. Constitution, while
5 simultaneously abdicating its duties under Article IV, Section 4 of the U.S. Constitution to
6 protect the State from the current emergency crises at the border.

7 92. As such, a live controversy exists that is ripe for determination and that would
8 be redressable through legal and equitable relief. Accordingly, Governor Ducey seeks a
9 declaration from this Court pursuant to 28 U.S.C. §§ 2201–02 that the State has the
10 constitutional authority to take immediate temporary steps as described in Paragraphs 42–
11 45, *supra*, to stem the imminent danger of criminal and humanitarian crises related to the
12 Arizona border.

13 **FIFTH CLAIM FOR RELIEF**

14 **(Declaratory Judgment in the alternative, 28 U.S.C. §§ 2201–02)**

15 **(*Ultra Vires* Agency Action)**

16 93. Governor Ducey incorporates and realleges the foregoing paragraphs as
17 though set forth here in full.

18 94. The Forest Service has asserted that it requires the State to obtain a BOR use
19 permit pursuant to 43 C.F.R. § 429, *et seq.*

20 95. A live controversy exists that is ripe for determination and that would be
21 redressable through equitable relief. Through its actions and statements, Defendants have
22 made clear that they intend to exercise jurisdiction over the Roosevelt Reservation.

23 96. Alleging in the alternative that the Roosevelt Reservation is unconstitutional,
24 but presuming that the Forest Service and BOR has jurisdiction over its asserted areas of
25 the Roosevelt Reservation, they at most possess an easement over the State's underlying
26 possession of the land subject to the Roosevelt Reservation. Accordingly, its attempt to
27 assert sole jurisdiction over the Roosevelt Reservation is outside its scope of authority and
28 is *ultra vires*.

1 C. In the alternative, declare that neither the Forest Service nor BOR have
2 jurisdiction over the areas of the Roosevelt Reservation in the State of Arizona over which
3 the Forest Service and BOR have respectively claimed jurisdiction;

4 D. In the alternative, declare that the State of Arizona has concurrent jurisdiction
5 with the appropriate federal governmental entity over those parts of the Roosevelt
6 Reservation located in the State;

7 E. In the alternative, declare that the Forest Service and BOR have only an
8 easement over the areas of the Roosevelt Reservation they claim jurisdiction and the land
9 is appropriately State lands;

10 F. In the alternative, declare that the circumstances on Arizona's southern border
11 present a public nuisance which the State is authorized to abate;

12 G. Permanently enjoin any federal governmental actors, including the Forest
13 Service and BOR, from attempting to exercise exclusive jurisdiction over the Roosevelt
14 Reservation in the State and allow the State to take appropriate actions, separately and in
15 coordination with federal partners, to protect its citizens and their property;

16 H. Awarding Plaintiff the reasonable costs and expenses of this action, including
17 attorneys' fees; and

18 I. Grant other such relief as may be just and proper.
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1 DATED this 21st day of October, 2022.

2 SNELL & WILMER L.L.P.

3
4 By: /s/ Brett W. Johnson

5 Brett W. Johnson
6 Colin P. Ahler
7 Ryan J. Regula
8 Charlene A. Warner
9 1 E. Washington St., Suite 2700
10 Phoenix, AZ 85004

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Anni L. Foster
OFFICE OF ARIZONA GOVERNOR
DOUGLAS A. DUCEY
1700 West Washington Street
Phoenix, Arizona 85007

*Attorneys for Plaintiff Douglas A.
Ducey, Governor of the State of
Arizona*

EXHIBIT 1



September 20, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20502

Dear Mr. President,

As chief executives of our states, we request a meeting with you at The White House to bring an end to the national security crisis created by eight months of unenforced borders. The months-long surge in illegal crossings has instigated an international humanitarian crisis, spurred a spike in international criminal activity, and opened the floodgates to human traffickers and drug smugglers endangering public health and safety in our states. A crisis that began at our southern border now extends beyond to every state and requires immediate action before the situation worsens.

The negative impacts of an unenforced border policy on the American people can no longer be ignored. Border apprehensions are up almost 500% compared to last year, totaling more than 1.3 million—more people than the populations of nine U.S. states. Approximately 9,700 illegal apprehensions have prior criminal convictions. Cartels and traffickers are making \$14 million a day moving people illegally across the border. More fentanyl has been seized this fiscal year than the last three years combined—almost 10,500 pounds of fentanyl when only 2 milligrams prove fatal. This is enough to kill seven times the U.S. population.

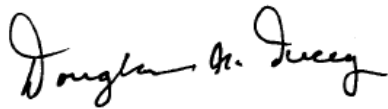
Despite the lack of federal action to reverse the crisis, many states have stepped up and committed unprecedented resources to support the security of our national border. We have heard directly from our constituents about the damage this crisis has caused in our states, and it is our duty as elected officials to act swiftly to protect our communities, as it is yours.

While governors are doing what we can, our Constitution requires that the President must faithfully execute the immigration laws passed by Congress. Not only has the federal government created a crisis, it has left our states to deal with challenges that only the federal government has a duty to solve. Our immigration system may be complicated and complex, but the solution to ending the border crisis is simple and straightforward. As President, you have the ability to take action to protect America, restore security, and end the crisis now.

Therefore, we come directly to you seeking an open and constructive dialogue regarding border enforcement on behalf of U.S. citizens in our states and all those hoping to become U.S. citizens. We must end the current crisis and return to border operations that respect the laws of our land and the lives of all people, including those in our states looking to the federal government to enforce and protect our nation's borders.

Due to the emergent crisis, we respectfully request a meeting as soon as your schedule allows within 15 days. While we know your responsibilities as Commander in Chief are substantial, ending the national crisis and securing our states must be a priority.

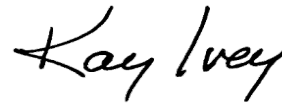
Sincerely,



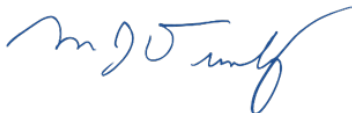
Governor Doug Ducey
State of Arizona



Governor Greg Abbott
State of Texas



Governor Kay Ivey
State of Alabama



Governor Mike Dunleavy
State of Alaska



Governor Asa Hutchinson
State of Arkansas



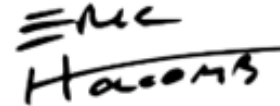
Governor Ron DeSantis
State of Florida



Governor Brian Kemp
State of Georgia



Governor Brad Little
State of Idaho



Governor Eric Holcomb
State of Indiana



Governor Kim Reynolds
State of Iowa



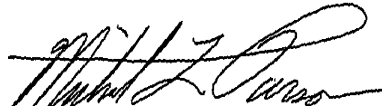
Governor Larry Hogan
State of Maryland



Governor Charlie Baker
State of Massachusetts



Governor Tate Reeves
State of Mississippi



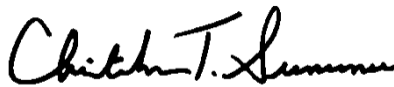
Governor Mike Parson
State of Missouri



Governor Greg Gianforte
State of Montana



Governor Pete Ricketts
State of Nebraska



Governor Chris Sununu
State of New Hampshire



Governor Doug Burgum
State of North Dakota

September 20, 2021

Page 3 of 3

A handwritten signature in blue ink that reads "Mike DeWine".

Governor Mike DeWine
State of Ohio

A handwritten signature in black ink that reads "Kevin Stitt".

Governor Kevin Stitt
State of Oklahoma

A handwritten signature in black ink that reads "Henry McMaster".

Governor Henry McMaster
State of South Carolina

A handwritten signature in black ink that reads "Kristi Noem".

Governor Kristi Noem
State of South Dakota

A handwritten signature in black ink that reads "Bill Lee".

Governor Bill Lee
State of Tennessee

A handwritten signature in black ink that reads "Spencer Cox".

Governor Spencer Cox
State of Utah

A handwritten signature in blue ink that reads "Jim Justice".

Governor Jim Justice
State of West Virginia

A handwritten signature in blue ink that reads "Mark Gordon".

Governor Mark Gordon
State of Wyoming

EXHIBIT 2



**Homeland
Security**

November 24, 2021

The Honorable Douglas Ducey
Governor
State of Arizona
1700 West Washington Street
Phoenix, AZ 85007

Dear Governor Ducey:

Thank you for your September 20, 2021 letter to President Biden regarding the complex and multifaceted challenges at our Southwest Border and ensuring the safety of the American people. Your letter was forwarded to the Department of Homeland Security for response.

The security of the Southwest Border and the safety of the American people are utmost priorities for the Biden-Harris Administration. DHS continues to enforce immigration laws and assist the Centers for Disease Control and Prevention (CDC) in enforcing its public health order, pursuant to Title 42 of the U.S. Code, while executing a long-term strategy and plan to rebuild a safe, orderly, and humane immigration and border management system.

The COVID-19 pandemic's ongoing health and economic impact throughout our hemisphere has contributed to migration flows that defy historical patterns. The trend of increased encounters at the Southwest Border began well before the current Administration took office and is exacerbated by a higher-than-average share of repeat encounters. At the same time, DHS's ability to expel individuals under the CDC order has decreased because of Mexico's reduced acceptance of expulsions and other countries' requirements to accept expulsions from the United States. This ability may be reduced further due to active litigation.

In recent months, DHS has deployed additional U.S. Customs and Border Protection staff to the Southwest Border; significantly expanded processing capacity; co-located U.S. Immigration and Customs Enforcement personnel with CBP in different locations; developed and deployed technological tools to further streamline processing efforts; reinvigorated DHS's intelligence cell to establish better and early warning systems that can detect irregular migration in the region before migrants arrive at the U.S. border; and leveraged the use of expedited removal for individuals who cannot be expelled under Title 42 and who do not claim a fear of persecution or torture. Additionally, DHS has worked with the U.S. Department of Justice (DOJ) to create a dedicated immigration court docket to conclude removal proceedings more efficiently and fairly for certain newly arriving families.

Regarding irregular migration more broadly, the Administration recognizes that lasting solutions require looking far beyond the Southwest Border, and that curbing the flow of irregular

migrants must comprehensively address long-standing factors that drive migration. Although there is no quick, easy, or single solution that will adequately address these challenges, the Administration has taken a series of steps forward.

First, the most sustainable solution is to address the root causes that push people to leave their home and migrate irregularly in the first place. To this end, the Administration is engaging with foreign governments and other partners to address insecurity, violence, corruption, and systemic poverty in countries experiencing large outflows of migrants. As part of this effort, President Biden has included \$861 million in aid for Central America in his FY22 budget proposal. The aim of this initiative is for individuals to find safety, security, and opportunity at home.

Second, the Administration is working with foreign governments and international organizations to provide potential migrants with meaningful opportunities to seek humanitarian protections as close to home as possible. For those who must flee and have a need for safety, a dangerous trek over thousands of miles should not be their only option.

Third, the Administration is promoting shared responsibility with other countries in the region by supporting their efforts to improve their border security, information sharing, protection, and temporary labor capacities. In addition to bolstering humanitarian protection capacity, the Administration is working to build lawful immigration pathways for individuals in the region.

Fourth, the Administration is seeking to dramatically improve its system for processing migrants at the Southwest Border and adjudicating any humanitarian protection claims that are made in a fair and timely way. Together with DOJ, DHS is in the process of finalizing a rule on this significant reform to our domestic humanitarian protection system.

While these efforts will dramatically improve migration management in the region and ensure safe and orderly processing at the Southwest Border, they will take time. Addressing longstanding challenges and rebuilding dismantled programs cannot be accomplished overnight, but the Administration is committed to exploring all resources, authorities, and partnerships to achieve these objectives. Missing are the tools only Congress can provide, and DHS calls on Congress to enact decades-overdue legislation to fundamentally reform the U.S. immigration system and bring it in line with our Nation's current migration challenges.

As referenced in your letter, transnational criminal organizations (TCOs) pose a significant danger to the American people, as well as to those they smuggle. TCOs profit from exploiting migration flows, preying on those in vulnerable positions, and use migrants to disrupt efforts to combat other lucrative and illicit businesses. In doing so, TCOs present a constant threat to the lives and livelihoods of migrants, border communities, and Americans impacted by their activities, including, as you allude to in your letter, those affected by the devastating opioid epidemic facing our Nation.

Consequently, on April 27, 2021, DHS announced a new collaborative anti-smuggling effort called Operation Sentinel to target all personnel and identifiable resources that TCOs require to operate. Utilizing the full breadth of domestic and foreign authorities, data, analytic capability, and capacity, Operation Sentinel maps organizations' networks; targets their members, associates,

and assets; and employs a series of focused actions and sanctions against them. Furthermore, ICE Homeland Security Investigations leverages its Border Enforcement Security Task Forces (BEST) program to bring together officers from more than 100 different law enforcement agencies to combat TCOs. BESTs employ a broad range of federal, state, local, tribal, and international law enforcement authorities and resources to identify, investigate, disrupt, and dismantle these organizations at every level. This model has enhanced collaboration between international partners in multinational criminal investigations.

In addition, ICE HSI administers mobile, biometric data collection programs to disrupt and dismantle TCOs by strengthening international partners' law enforcement investigations, border security, and counterterrorism efforts. Lastly, through ICE HSI's Transnational Criminal Investigative Unit (TCIU) program, ICE HSI engages vetted host country partners to facilitate rapid bilateral cooperation on investigations and prosecutions related to weapons trafficking, counter-proliferation, money laundering, bulk cash smuggling, human and narcotics trafficking and smuggling, customs-related fraud, child exploitation, and cybercrime.

Whether on the near-term response to manage migration flows at the Southwest Border or executing on the Administration's strategies to address root causes and collaboratively manage migration challenges overall, DHS personnel on the frontlines of these critical missions are delivering day in and day out on behalf of the American people. They have the Administration's full support in their tireless efforts.

Thank you again for your letter. The cosigners of your letter will receive separate, identical responses. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alejandro N. Mayorkas". The signature is fluid and stylized, with the first name being the most prominent.

Alejandro N. Mayorkas
Secretary

EXHIBIT 3

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

EXECUTIVE ORDER

Executive Order 2022-04

Securing Arizona's Southern Border

WHEREAS, on April 20, 2021, I issued a declaration of emergency pursuant to A.R.S. § 26-303(D) due to the condition on Arizona's southern border and the failed policies of the federal government that have encouraged foreign nationals to illegally cross the border; and

WHEREAS, consistent with that declaration, in 2021, I deployed the Arizona National Guard to the Arizona border to assist law enforcement and local governments with the crisis in order to ensure that law enforcement could maximize their presence across the border; and

WHEREAS, since that time, the public health, safety and welfare has continued to be threatened with the State, local governments and non-governmental organizations bearing the brunt of the influx of foreign nationals crossing into Arizona; and

WHEREAS, in 1907, declaring that it was "necessary for the public welfare," President Theodore Roosevelt unilaterally issued a Presidential Proclamation without relying upon congressional authorization claiming a 60-foot wide swath of land as reserved to the federal government "as a protection against the smuggling of goods between the United States and the Republic [of Mexico]"; and

WHEREAS, for years, the federal government has failed to use, maintain and safeguard this swath of land for the purpose designated in President Roosevelt's Proclamation, resulting in dire consequences for Arizona which has been forced to suffer the consequence of the exploitation of Arizona's southern border with Mexico by transnational criminal organizations, also known as cartels; and

WHEREAS, the federal government's refusal to secure the southern border has resulted in the ability of transnational criminal organizations to import illegal drugs, including marijuana, heroin, methamphetamine and recently fentanyl across an unrestricted southern border in Arizona; and

WHEREAS, the federal government has intentionally neglected Arizona's southern border as it installed barriers on the border with Mexico from California to Texas; and

WHEREAS, construction of an effective border barrier on Arizona's border by the federal government began in 2017, but was halted by the federal government in 2021 prior to completion, without consideration of the impact that gaps in the barrier would have on Arizona's border communities; and

WHEREAS, in 2021 the federal government lifted the "Remain in Mexico" policy that limited the number of foreign nationals accepted into the United States under its immigration limits, resulting in

litigation that was resolved in favor of the federal government at the United State Supreme Court in June, 2022; and

WHEREAS, on August 9, 2022, following the issued judgment regarding the United States Supreme Court opinion on the “Remain in Mexico” program, the federal government terminated the program; and

WHEREAS, in early 2021 when the “Remain in Mexico” program was first lifted, more than 100,000 foreign nationals illegally crossed the southern border in just one month, and the numbers of illegal border crossers has skyrocketed to historic levels; and

WHEREAS, it is projected that following the termination of the “Remain in Mexico” program, the same trend of increased illegal border crossings into Arizona will occur; and

WHEREAS, Arizona’s communities are currently dealing with large numbers of foreign nationals who are crossing into the United States illegally and using state and local resources, that are significantly more in demand due to the strain that inflation is placing on our own citizens, creating a nuisance for which the federal government has refused and failed to abate; and

WHEREAS, the shelters in Yuma County that assist foreign nationals seeking refuge in the United States following processing by United States Customs and Border Protection have been over capacity for months, with capacity ranging from approximately 115% to 160%; and

WHEREAS, at times over the past year, shelters in Pima County have also been over capacity resulting in overflow to shelters in Maricopa County and throughout the nation; and

WHEREAS, to manage this humanitarian crisis, the State of Arizona has already taken on great expense to assist foreign nationals to move on to their final destinations by transporting those who voluntarily accept assistance to Washington, D.C. where they receive further assistance; and

WHEREAS, the law enforcement officers in Arizona work tirelessly every day to keep the peace; and

WHEREAS, in 2016, the Arizona Border Strike Force was established to target transnational criminal organizations that were exploiting Arizona’s southern border through drug and human trafficking and other crime; and

WHEREAS, due to the lack of action by the federal government and the dire security threat presented by the lack of security on the southern border, I with 25 other Governors across the nation established the American Governors’ Border Strike Force to target transnational criminal organizations and related criminal activity that contributes to our nation’s drug epidemic; and

WHEREAS, recently, video surfaced on social media, which depicted heavily armed cartel members driving on an Arizona highway past Arizona law enforcement officers in a deliberate message that they were able to operate with impunity; and

WHEREAS, just south of Arizona, transnational criminal organizations and cartels are in control of the plazas that control the flow of people and goods into the Arizona and beyond; and

WHEREAS, these transnational criminal organizations also have control over whether and where foreign nationals cross illegally into Arizona; and

WHEREAS, these transnational criminal organizations use the gaps in the border wall between Arizona and Mexico to effectuate their criminal activity — including the importation of illicit drugs — into our state; and

WHEREAS, law enforcement officials have also apprehended subjects crossing Arizona’s southern border that are on the terrorist watchlist; and

WHEREAS, in December, 2021, the United States Department of Homeland Security “authorize[d] the U.S. Customs and Border Protection (CBP) to address life, safety, environmental, and remediation requirements for border barrier projects located within the Border Patrol’s Yuma and Tucson Sectors”; and

WHEREAS, as of today, construction for those projects have yet to begin; and

WHEREAS, since January 2021, numerous subjects on the United States terrorist watchlist have been arrested while attempting to cross the southern border, with an unknown number actually crossing without being apprehended; and

WHEREAS, in the last month, the federal government again announced that it will fill the gaps in the border wall in some areas of the southern border after eighteen months of allowing criminals and terrorists to enter the United States – issuing a request for proposals that will delay construction for at least another month; and

WHEREAS, following that announcement, the proposed timeline for completion will be no sooner than sometime in the next three to six months; and

WHEREAS, Arizona state agency personnel have had good faith discussions with federal authorities about the current humanitarian and public safety crisis where those authorities agreed that it was necessary to close the gaps in the border wall to address the current situation on Arizona’s southern border; and

WHEREAS, due to the ongoing crisis on Arizona’s southern border, and in addition to the authority in Title 26 of the Arizona Revised Statutes, the Arizona State Legislature appropriated almost \$400 million for Fiscal Year 2023 to fill the gaps in the border wall in order to relieve the criminal activity and humanitarian crisis that such gaps allow, which will minimize the flow of people through crops and other private property pursuant to Laws 2022, Chapter 334, Section 1; and

WHEREAS, the spending authority for this funding was effective on July 1, 2022; and

WHEREAS, based on information gathered by the Arizona Department of Emergency Management and the Arizona National Guard, it has been determined that the federal government has failed to protect our great state, which has resulted in imminent danger to Arizona and its citizens; and

WHEREAS, as Governor of Arizona, our state has enjoyed a cooperative and beneficial trade relationship with Mexico and the state of Sonora, which we intend to continue; and

WHEREAS, in order to ensure effective operation of the ports for all of Arizona's vital trade partners, Arizona must secure its southern border; and

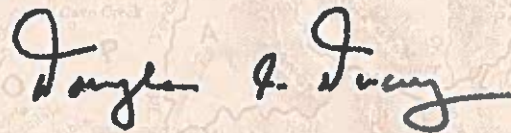
WHEREAS, the State of Arizona has the inherent right under the United States Constitution to defend itself when there is imminent danger to the health, welfare, safety and security of its citizens; and

WHEREAS, it is necessary and appropriate to protect the lives and safety of the citizens of Arizona and to protect and preserve private and public properties.

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Arizona Constitution and laws of this state including but not limited to Title 26, Chapter 2 of the Arizona Revised Statutes hereby order as follows:

1. The Department of Emergency Management shall immediately initiate operations to close the gaps in Arizona's southern border wall, regardless of location, consistent with Laws 2022, Chapter 334, Section 1 and other applicable Arizona laws.
2. The Department of Emergency Management shall work with other Arizona state agencies, local authorities, private organizations and, to the extent possible, federal agencies to accomplish this mission as quickly as possible.
3. The continued authorization of the Adjutant General to mobilize and activate all or such part of the Arizona National Guard as is determined necessary to assist in the protection of life and property throughout the State for the purposes of the prior emergency declaration and this order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



GOVERNOR

DONE at the Capitol in Phoenix on this twelfth day of August in the year Two Thousand and Twenty Two and of the Independence of the United States of America the Two Hundred and Forty-Seventh.

ATTEST:



Secretary of State



EXHIBIT 4

Reserved
settlement. from

Vol. 84, p. 288.

tions shall not apply to any land embraced in any selection, entry, or filings, which may have been permitted to remain of record subject to the creation of a permanent reservation.

Warning is hereby given to all persons not to make settlement upon any of the lands reserved by this proclamation, unless and until they are listed by the Secretary of Agriculture and opened to homestead settlement or entry by the Secretary of the Interior under the Act of Congress, approved June eleventh, nineteen hundred and six, entitled, "An Act To provide for the entry of Agricultural lands within forest reserves."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 25th day of May, in the year of our Lord one thousand nine hundred and seven,
[SEAL.] and of the Independence of the United States the one hundred and thirty-first.

THEODORE ROOSEVELT

By the President:

ELIOT ROOR

Secretary of State.

May 27, 1907.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Mexican bound-
ary. Preamble.

WHEREAS, it is necessary for the public welfare that a strip of land lying along the boundary line between the United States and the Republic of Mexico be reserved from the operation of the public land laws and kept free from obstruction as a protection against the smuggling of goods between the United States and said Republic;

Reservation of a
strip of land 80
feet wide.

Now, therefore, I, THEODORE ROOSEVELT, President of the United States, do hereby declare, proclaim and make known that there are hereby reserved from entry, settlement or other form of appropriation under the public land laws and set apart as a public reservation, all public lands within sixty feet of the international boundary between the United States and the Republic of Mexico, within the State of California and the Territories of Arizona and New Mexico; and where any river or stream forms any part of said international boundary line, this reservation shall be construed and taken as extending to and including all public lands belonging to the United States which lie within sixty feet of the margin of such river or stream.

Location.

Lands excepted.

Excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing, selection or rights of way duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose to which this reservation for customs purposes is repugnant; PROVIDED, that these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler or claimant continues to comply with the law under which the entry, filing or settlement was made, or unless the reservation or withdrawal to which this reservation is inconsistent

continues in force; **PROVIDED FURTHER**, that the said strips, tracts, or parcels of land, reserved as aforesaid, may be used for public highways but for no other purpose whatever, so long as the reservation of same under this proclamation shall continue in force. Use for public highways.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 27th day of May, in the year of our Lord one thousand nine hundred and seven, and of [SEAL] the Independence of the United States the one hundred and thirty-first.

THEODORE ROOSEVELT

By the President:

ELIHU ROOR

Secretary of State.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

May 27, 1907.

A PROCLAMATION

WHEREAS, it appears that the public good would be promoted by adding to the Diamond Mountain National Forest certain lands, within the State of California, which are in part covered with timber, and by excluding therefrom certain lands;

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by the Act of Congress, approved June fourth, eighteen hundred and ninety-seven, entitled, "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," do proclaim that the boundaries of the Diamond Mountain National Forest are hereby changed and that they are now as shown on the diagram forming a part hereof;

Excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, if the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose with which this reservation for forest uses is inconsistent: Provided, that these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal with which this reservation is inconsistent continues in force; not excepting from the force and effect of this proclamation, however, any part of the National Forest hereby enlarged which may have been withdrawn to protect the coal therein, but this proclamation does not vacate any such coal land withdrawal: and provided that these exceptions shall not apply to any land embraced in any selection, entry, or filing, which may have been permitted to remain of record subject to the creation of a permanent reservation.

Warning is hereby given to all persons not to make settlement upon any of the lands reserved by this proclamation, unless and until they are listed by the Secretary of Agriculture and opened to homestead settlement or entry by the Secretary of the Interior under

Diamond Mountain National Forest, Cal.
Preamble.
Vol. 34, pp. 8113, 3241.
Boundaries modified.
Vol. 30, p. 36.
Post, pp. 2188, 2240.

Lands excepted.

Coal lands.

Reserved from settlement.

EXHIBIT 5

Allen Clark, Director
Arizona Division of Emergency Management
5636 E. McDowell Road Bldg. M5101
Phoenix, AZ 85008

Dear Mr. Clark:

As you know, on September 16, 2022, representatives from your office, the Arizona Department of Emergency Management (AZDEMA), emailed Coronado National Forest personnel seeking authorization “to place barriers on National Forest land in all areas that currently have gaps in the federal wall.” While they did not identify the specific gaps that AZDEMA seeks to address, media reports indicate that the project may entail the placement of approximately 300 containers between 20 and 40 feet in length along an undisclosed extent of National Forest System (NFS) lands. Members of my staff and I communicated verbally over the last two weeks with you and other personnel from your office, advising of the federal regulatory approval process that governs NFS land use and occupancy and that prior approval would need to be obtained before the State could proceed. Your office was also encouraged to communicate its plans to the U.S. Department of Homeland Security.

On the afternoon of October 5, 2022, Forest Service personnel observed approximately 15 shipping containers and associated construction equipment at a staging area just north of the international border on NFS lands in Cochise County. As of October 6, 2022, at least 22 shipping containers, associated construction equipment, and private security personnel were located on the area. The Forest Service did not authorize this occupancy and use. It is my understanding that AZDEMA also intends to transport additional containers to the border and that it proposes to utilize existing roads to transport shipping containers to their intended destinations. Not only has the Forest Service not authorized the placement of any shipping containers on NFS lands, AZDEMA has not identified which roads will be used, how the proposed road use will impact NFS lands, or the extent to which excavation will be required to facilitate the placement of the containers.

As we discussed previously, the process for obtaining a permit is outlined in 36 C.F.R. 251.54. Please provide the requisite information required by this process at your earliest convenience to Adam Milnor, Recreation and Lands Staff Officer, Coronado National Forest, at adam.milnor@usda.gov. Upon receipt of the required information, the Forest Service will assess the information provided against initial screening criteria outlined in the regulations. If the proposal passes the applicable screening criteria, it will also have to be analyzed for effects on the environment in compliance with the National Environmental Policy Act and other federal law.

Meanwhile, please refrain from any further activity associated with the containers on NFS lands, including the use of any equipment, until such time as a proper authorization is secured. If you have any questions about how to comply with the special use authorization process, please reach out to me by email at kerwin.dewberry@usda.gov, or by phone at (520) 262-1652.

Sincerely,

KERWIN
DEWBERRY

Digitally signed by
KERWIN DEWBERRY
Date: 2022.10.07
19:44:35 -07'00'

Kerwin Dewberry
Forest Supervisor
Coronado National Forest

EXHIBIT 6



Douglas A. Ducey
GOVERNOR

STATE OF ARIZONA
DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

5636 East McDowell Road
Phoenix, Arizona 85008-3495
(602) 267-2700 DSN: 853-2700



Maj Gen Kerry L. Muehlenbeck
THE ADJUTANT GENERAL

NGAZ-TAG

October 7, 2022

MEMORANDUM FOR NATIONAL FOREST SERVICE
(Mr. Kerwin Dueberry, National Forest Service Supervisor)

SUBJECT: Arizona intent to continue with border wall construction

Dear Sir:

The Arizona Department of Emergency and Military Affairs, through our Division of Emergency Management, has attempted to work with your agency to address the issues on Arizona's southern border. We are currently focusing on the western side of Cochise County where approximately 10 miles of border is wide open, with only a Normandy barrier to prevent criminals from leveraging Arizona's border for their criminal enterprises.

As outlined in the attached executive order from Governor Ducey, the lack of action by the federal government to secure Arizona's border continues to threaten the public safety of Arizona and its citizens. Cochise County Sheriff Mark Dannels has repeatedly pleaded with federal officials to act in his county so that citizens feel safe in their homes.

Although your agency has participated in some calls with Arizona officials, no action has been taken to address the state's concerns. Due to the lack of response and pursuant to the directive by Governor Ducey, work will commence to close the referenced gap to ensure the safety of Arizona citizens. We continue to welcome cooperation and collaboration with our federal partners.

A handwritten signature in black ink, appearing to read "K. Muehlenbeck".

KERRY L. MUEHLENBECK
Major General, AZANG
The Adjutant General

Attachment: Executive Order 2022-04, Securing Arizona's Borders

EXHIBIT 7

**Memorandum of Understanding
Among
U. S. Department of Homeland Security
and
U. S. Department of the Interior
and
U. S. Department of Agriculture
Regarding
Cooperative National Security and Counterterrorism
Efforts on Federal Lands along the United States' Borders**

I. Purpose and Scope

A. This Memorandum of Understanding (MOU) is made and entered into by the Department of Homeland Security (DHS), including and on behalf of its constituent bureau U.S. Customs and Border Protection (CBP) and the CBP Office of Border Patrol (CBP-BP); the Department of the Interior (DOI), including and on behalf of its constituent bureaus, the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and the Bureau of Reclamation (BOR); and the Department of Agriculture (USDA), including and on behalf of its constituent agency the U.S. Forest Service (USFS). Throughout this MOU, these three Departments, including their constituent agencies, may be referred to as "the Parties." Any reference to a bureau, agency, or constituent component of a Party shall not be deemed to exclude application to any appropriate bureau or constituent component of that Party. DHS recognizes that the BIA enters into this agreement only on its own behalf and not on behalf of any Indian tribe.

B. The geographic and jurisdictional scope of this MOU is nationwide. The Parties recognize the national security and counterterrorism significance of preventing illegal entry into the United States by cross-border violators (CBVs), including but not limited to the following: drug and human smugglers and smuggling organizations, foreign nationals, and terrorists and terrorist organizations. The Parties further recognize that damage to DOI and USDA-managed lands and natural and cultural resources is often a significant consequence of such illegal entry. The Parties are committed to preventing illegal entry into the United States, protecting Federal lands and natural and cultural resources, and - where possible - preventing adverse impacts associated with illegal entry by CBVs.

C. This MOU is intended to provide consistent goals, principles, and guidance related to border security, such as law enforcement operations; tactical infrastructure installation; utilization of roads; minimization and/or prevention of significant impact on or impairment of natural and cultural resources; implementation of the Wilderness Act, Endangered Species Act, and other related environmental law, regulation, and policy across land management agencies; and provide for coordination and sharing information

on threat assessments and other risks, plans for infrastructure and technology improvements on Federal lands, and operational and law enforcement staffing changes. This MOU provides guidance in the development of individual agreements, where appropriate, between CBP and land management agencies to further the provisions contained herein.

D. This MOU is entered into pursuant to the governing statutory authorities of each of the Parties.

E. The Parties acknowledge that CBP operation and construction within the sixty-foot "Roosevelt Reservation" of May 27, 1907 (along the US-Mexico border) and the sixty-foot "Taft Reservation" of May 3, 1912 (along the US-Canada border) is consistent with the purpose of those reservations and that any CBP activity (including, but not limited to, operations and construction) within the sixty-foot reservations is outside the oversight or control of Federal land managers.

F. This MOU supersedes any conflicting provision of any prior MOU or Memorandum of Agreement between the Parties or their subordinate bureaus or components.

II. Background

A. DHS, through its constituent bureaus (including CBP and its CBP-BP), is statutorily mandated to control and guard the Nation's borders and boundaries, including the entirety of the northern and southern land and water borders of the United States.

B. DOI and USDA, through their constituent bureaus, are statutorily charged as managers of Federal lands throughout the United States, including DOI and USDA lands in the vicinity of international borders that are administered as wilderness areas, conservation areas, national forests, wildlife refuges, units/irrigation projects of the Bureau of Reclamation, and/or units of the national park system. Tribal governments have primary management roles over tribal lands; however, the United States, through the BIA, may also have a stewardship or law enforcement responsibility over these lands. Many of these Federal and tribal lands contain natural and cultural resources that are being degraded by activities related to illegal cross-border movements.

C. The volume of CBVs can and has, in certain areas, overwhelmed the law enforcement and administrative resources of Federal land managers. In order to more effectively protect national security, respond to terrorist threats, safeguard human life, and stop the degradation of the natural and cultural resources on those lands, DOI and USDA land managers will work cooperatively with CBP to benefit from the enforcement presence, terrorist and CBV interdiction, and rescue operations of CBP.

III. Common Findings and Affirmation of the Parties

A. The Parties to this MOU recognize that CBP-BP access to Federal lands can facilitate rescue of CBVs on Federal lands, protect those lands from environmental damage, have a role in protecting the wilderness and cultural values and wildlife resources of these lands, and is necessary for the security of the United States. Accordingly, the Parties understand that CBP-BP, consistent with applicable Federal laws and regulations, may access public lands and waterways, including access for purposes of tracking, surveillance, interdiction, establishment of observation points, and installation of remote detection systems.

B. The Parties recognize that DOI and USDA have responsibility for enforcing Federal laws relating to land management, resource protection, and other such functions on Federal lands under their jurisdiction.

IV. Responsibilities and Terms of Agreement

A. The Parties Agree to the Following Common Goals, Policies, and Principles:

1. The Parties enter into this MOU in a cooperative spirit with the goals of securing the borders of the United States, addressing emergencies involving human health and safety, and preventing or minimizing environmental damage arising from CBV illegal entry on public lands;
2. The Parties will strive to both resolve conflicts at and delegate resolution authority to the lowest field operational level possible while applying the principles of this MOU in such manner as will be consistent with the spirit and intent of this MOU;
3. The Parties will develop and consistently utilize an efficient communication protocol respecting the chain of command for each of the Parties that will result in the consistent application of the goals, policies, and principles articulated in this MOU, and provide a mechanism that will, if necessary, facilitate the resolution of any conflicts among the Parties. If resolution of conflict does not occur at the local level, then the issue will be elevated first to the regional/sector office; if not resolved at the regional/sector level, then the issue will be elevated to the headquarters level for resolution;
4. The Parties will cooperate with each other to complete, in an expedited manner, all compliance that is required by applicable Federal laws not otherwise waived in furtherance of this MOU. If such activities are authorized by a local agreement as described in sub-article IV.B below, then the DOI, USDA, and CBP will complete the required compliance before executing the agreement;

5. The Parties will cooperate with each other to identify methods, routes, and locations for CBP-BP operations that will minimize impacts to natural, cultural, and wilderness resources resulting from CBP-BP operations while facilitating needed CBP-BP access;
6. The Parties will, as necessary, plan and conduct joint local law enforcement operations consistent with all Parties' legal authorities;
7. The Parties will establish a framework by which threat assessments and other intelligence information may be exchanged, including intelligence training to be conducted by all parties so that the intelligence requirements of each may be identified and facilitated;
8. The Parties will establish forums and meet as needed at the local, regional, and national levels to facilitate working relationships and communication between all Parties;
9. The Parties will develop and share joint operational strategies at the local, regional, and national levels, including joint requests for infrastructure and other shared areas of responsibility;
10. The Parties will share the cost of environmental and cultural awareness training unless otherwise agreed; and
11. The Parties will, as appropriate, enter into specific reimbursable agreements pursuant to the Economy Act, 31 U.S.C. §1535 when one party is to furnish materials or perform work or provide a service on behalf of another party.

B. Responsibilities and Terms Specific to DOI and USDA. The DOI and the USDA hereby recognize that, pursuant to applicable law, CBP-BP is authorized to access the Federal lands under DOI and USDA administrative jurisdiction, including areas designated by Congress as wilderness, recommended as wilderness, and/or wilderness study areas, and will do so in accordance with the following conditions and existing authorities:

1. CBP-BP agents on foot or on horseback may patrol, or pursue, or apprehend suspected CBVs off-road at any time on any Federal lands administered by the Parties;
2. CBP-BP may operate motor vehicles on existing public and administrative roads and/or trails and in areas previously designated by the land management agency for off-road vehicle use at any time, provided that such use is consistent with presently authorized public or administrative use. At CBP-BP's request, the DOI and the USDA will provide CBP-BP with keys, combinations, or other means necessary to

access secured administrative roads/trails. CBP-BP may drag existing public and administrative roads that are unpaved for the purpose of cutting sign, subject to compliance with conditions that are mutually agreed upon by the local Federal land manager and the CBP-BP Sector Chief. For purposes of this MOU, “existing public roads/trails” are those existing roads/trails, paved or unpaved, on which the land management agency allows members of the general public to operate motor vehicles, and “existing administrative roads/trails” are those existing roads/trails, paved or unpaved, on which the land management agency allows persons specially authorized by the agency, but not members of the general public, to operate motor vehicles;

3. CBP-BP may request, in writing, that the land management agency grant additional access to Federal lands (for example, to areas not previously designated by the land management agency for off-road use) administered by the DOI or the USDA for such purposes as routine patrols, non-emergency operational access, and establishment of temporary camps or other operational activities. The request will describe the specific lands and/or routes that the CBP-BP wishes to access and the specific means of access desired. After receiving a written request, the local Federal land manager will meet promptly with the CBP-BP Sector Chief to begin discussing the request and negotiating the terms and conditions of an agreement with the local land management agency that authorizes access to the extent permitted by the laws applicable to the particular Federal lands. In each agreement between CBP-BP and the local land management agency, the CBP-BP should be required to use the lowest impact mode of travel and operational setup reasonable and practicable to accomplish its mission. The CBP-BP should also be required to operate all motorized vehicles and temporary operational activities in such a manner as will minimize the adverse impacts on threatened or endangered species and on the resources and values of the particular Federal lands. However, at no time should officer safety be compromised when selecting the least impactful conveyance or operational activity. Recognizing the importance of this matter to the Nation’s security, the CBP-BP Sector Chief and the local Federal land manager will devote to this endeavor the resources necessary to complete required compliance measures in order to execute the local agreement within ninety (90) days after the Federal land manager has received the written request for access. Nothing in this paragraph is intended to limit the exercise of applicable emergency authorities for access prior to the execution of the local agreement. The Secretaries of the Interior, Agriculture, and Homeland Security expect that, absent compelling justification, each local agreement will be executed within that time frame and provide the maximum amount of access requested by the CBP-BP and allowed by law;

4. Nothing in this MOU is intended to prevent CBP-BP agents from exercising existing exigent/emergency authorities to access lands, including authority to conduct motorized off-road pursuit of suspected CBVs at any time, including in areas designated or recommended as wilderness, or in wilderness study areas when, in their professional judgment based on articulated facts, there is a specific exigency/emergency involving human life, health, safety of persons within the area, or posing a threat to national security, and they conclude that such motorized off-road pursuit is reasonably expected to result in the apprehension of the suspected CBVs. Articulated facts include, but are not limited to, visual observation; information received from a remote sensor, video camera, scope, or other technological source; fresh “sign” or other physical indication; canine alert; or classified or unclassified intelligence. For each such motorized off-road pursuit, CBP-BP will use the least intrusive or damaging motorized vehicle readily available, without compromising agent or officer safety. In accordance with paragraph IV.C.4, as soon as practicable after each such motorized off-road pursuit, CBP-BP will provide the local Federal land manager with a brief report;
5. If motorized pursuits in wilderness areas, areas recommended for wilderness designation, wilderness study areas, or off-road in an area not designated for such use are causing significant impact on the resources, or if other significant issues warrant consultation, then the Federal land manager and the CBP-BP will immediately meet to resolve the issues subject to paragraphs IV.A.2 and IV.A.3 of this MOU;
6. CBP may request, in writing, that the land management agency authorize installation or construction of tactical infrastructure for detection of CBVs (including, but not limited to, observation points, remote video surveillance systems, motion sensors, vehicle barriers, fences, roads, and detection devices) on land under the local land management agency’s administrative jurisdiction. In areas not designated as wilderness, the local Federal land manager will expeditiously authorize CBP to install such infrastructure subject to such terms and conditions that are mutually developed and articulated in the authorization issued by the land management agency. In areas designated or managed as wilderness, the local Federal land manager, in consultation with CBP, will promptly conduct a “minimum requirement,” “minimum tool,” or other appropriate analysis. If supported by such analysis, the local Federal land manager will expeditiously authorize CBP to install such infrastructure subject to such terms and conditions that are mutually developed and articulated in the authorization issued by the land management agency;

7. The DOI and USDA will provide CBP-BP agents with appropriate environmental and cultural awareness training formatted to meet CBP-BP operational constraints. The DOI and USDA will work with CBP-BP in the development and production of maps for use or reference by CBP-BP agents including, as appropriate, site-specific and resource-specific maps that will identify specific wildlife and environmentally or culturally sensitive areas;
8. The DOI and USDA will, as applicable, provide CBP-BP with all assessments and studies done by or on behalf of DOI or USDA on the effects of CBVs on Federal lands and native species to better analyze the value of preventative enforcement actions;
9. The DOI and USDA will assist CBP-BP in search and rescue operations on lands within the respective land managers' administration when requested;
10. The CBP-BP and land management agencies may cross-deputize or cross-designate their agents as law enforcement officers under each other agency's statutory authority. Such cross-deputation or cross-designation agreements entered into by the local land management agency and the field operations manager for the CBP-BP shall be pursuant to the policies and procedures of each agency; and
11. DOI and USDA will work at the field operations level with affected local CBP-BP stations to establish protocols for notifying CBP-BP agents when DOI or USDA law enforcement personnel are conducting law enforcement operations in an area where CBP-BP and DOI/USDA operations can or will overlap.

C. Responsibilities and Terms Specific to the CBP. DHS hereby agrees as follows:

1. Consistent with the Border Patrol Strategic Plan, CBP-BP will strive to interdict CBVs as close to the United States' international borders as is operationally practical, with the long-term goal of establishing operational control along the immediate borders;
2. If the CBP-BP drag any unpaved roads for the purpose of cutting sign under provision IV.B.2 above, then CBP-BP will maintain or repair such roads to the extent that they are damaged by CBP-BP's use or activities;
3. If CBP-BP agents pursue or apprehend suspected CBVs in wilderness areas or off-road in an area not designated for such use under

paragraph IV.B.5, then the CBP-BP will use the lowest impact mode of travel practicable to accomplish its mission and operate all motorized vehicles in such a manner as will minimize the adverse impacts on threatened or endangered species and on the resources and values of the particular Federal lands, provided officer safety is not compromised by the type of conveyance selected;

4. CBP-BP will notify the local Federal land manager of any motorized emergency pursuit, apprehension, or incursion in a wilderness area or off-road in an area not designated for such use as soon as is practicable. A verbal report is sufficient unless either CBP-BP or the land managing agency determines that significant impacts resulted, in which case a written report will be necessary;
5. If motorized pursuits in wilderness areas, areas recommended for wilderness designation, wilderness study areas, or off-road in an area not designated for such use are causing significant impact on the resources as determined by a land manager, or if other significant issues warrant consultation, then the CBP-BP and Federal land manager will immediately meet to resolve the issues subject to paragraphs IV.A.2 and IV.A.3 of this MOU;
6. CBP will consult with land managers to coordinate the placement and maintenance of tactical infrastructure, permanent and temporary video, seismic and other remote sensing sites in order to limit resource damage while maintaining operational efficiency;
7. CBP-BP will ensure that current and incoming CBP-BP agents attend environmental and cultural awareness training to be provided by the land management agencies;
8. CBP-BP will provide land management agencies with appropriate and relevant releasable statistics of monthly CBV apprehensions, search and rescue actions, casualties, vehicles seized, drug seizures and arrests, weapons seizures and arrests, and other significant statistics regarding occurrences on the lands managed by the land manager;
9. CBP-BP will consult with land managers in the development of CBP-BP's annual Operational-Requirements Based Budgeting Program to ensure affected land managers can provide input and are, in the early stages of planning, made aware what personnel, infrastructure, and technology the CBP-BP would like to deploy along the border within their area of operation; and
10. CBP-BP will work at the field operations manager level with affected local land management agencies to establish protocols for notifying

land management agency law enforcement officers when BP is conducting special operations or non-routine activities in a particular area.

V. Miscellaneous Provisions

A. Nothing in this MOU may be construed to obligate the agencies or the United States to any current or future expenditure of funds in advance of the availability of appropriations, nor does this MOU obligate the agencies or the United States to spend funds for any particular project or purpose, even if funds are available.

B. Nothing in this MOU will be construed as affecting the authority of the Parties in carrying out their statutory responsibilities.

C. This MOU may be modified or amended in writing upon consent of all Parties, and other affected Federal agencies may seek to become a Party to this MOU.

D. The Parties shall retain all applicable legal responsibility for their respective personnel working pursuant to this MOU with respect to, *inter alia*, pay, personnel benefits, injuries, accidents, losses, damages, and civil liability. This MOU is not intended to change in any way the individual employee status or the liability or responsibility of any Party under Federal law.

E. The Parties agree to participate in this MOU until its termination. Any Party wishing to terminate its participation in this MOU shall provide sixty (60) days written notice to all other Parties.

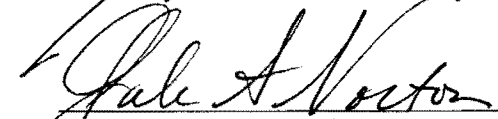
F. This document is an intra-governmental agreement among the Parties and does not create or confer any rights, privileges, or benefits upon any person, party, or entity. This MOU is not and shall not be construed as a rule or regulation.

In witness whereof, the Parties hereto have caused this Memorandum of Understanding to be executed and effective as of the date of the last signature below.

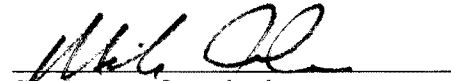
Date: 3/24/06


Secretary of Homeland Security

Date: 3/31/06


Secretary of the Interior

Date: 3/29/06


Secretary of Agriculture